IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2866 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRAKMAR CHANDRAKANT RANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/05/2000

ORAL JUDGEMENT

#. The petitioner - Mahendrakumar Chandrakant Rana has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Surat City, Surat, in exercise of

powers under Section 3(1) of the PASA Act, dated January 29, 2000.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner. The detaining authority also took into consideration the statements of two anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The only contention that is raised is the consideration of irrelevant material namely possibility of resorting to proceedings under section 57 of the Bombay Police Act. The attention of this Court is drawn go page 4 of grounds of detention wherein, the authority has considered that resorting to action under section 57 of the Bombay Police Act is not possible as convictions are required for taking action under section 57 of the Bombay Police Act. In the instant case, there is only one offence registered against the detenue in respect of which investigation is shown to be pending.

#. Similar question arose before the Division Bench of this Court in the case of Bharatkumar R. Vasava v. District Magistrate, Bharuch, reported in 1992 (2) GLH 350, where in para 4 it was observed as under.

> "Now, Section 57 of the Bombay Police Act cannot apply as per the activities alleged in the grounds of detention because the petitioner is not convicted in a single offence at any time as envisaged by Section 57 of the Bombay Police Act. Section 57 of the Bombay Police Act will apply in a case where the person is convicted of the offence mentioned in Section 57 of the Bombay Police Act and, therefore, the subjective satisfaction arrived at by the detaining authority is vitiated because of non-application of mind."

In para 6, after quoting provision of section 57 of the Bombay Police Act, the Division bench observed as under.

> "Section 57 therefore, is designed to protect public from the activities of undesirable persons who have been convicted of offence mentioned in

clauses (a), (b) and (c) of Section 57."

In para 7, the Division Bench observed as under.

"In the instant case, there is no allegation in the grounds of detention that the detenu has been convicted for any of the offences mentioned in clause (a) (b) or (c) of Section 57 and, therefore, Section 57 could not have been attracted in this case. Thus, in our opinion, this is a clear case of non-application of mind and, therefore, the satisfaction envisaged by Section 3 of the Act is vitiated."

#. In view of the above observations, the facts of the present case being similar to the above referred decision of the Division Bench of this Court, the order of detention deserves to be quashed and set aside on account of non-application of mind and the petition deserves to be allowed.

#. The petition is allowed. The order of detention dated January 29, 2000 is hereby quashed and set aside. The detenue - Mahendrakumar Chandrakant Rana, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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